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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 141 Session of  
2013

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INTRODUCED BY FONTANA, FARNESE, KASUNIC, SCHWANK, GREENLEAF,  
VULAKOVICH, BROWNE, YUDICHAK, FERLO, SMITH, BREWSTER,  
GORDNER, COSTA AND BOSCOLA, JANUARY 15, 2013

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REFERRED TO FINANCE, JANUARY 15, 2013

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AN ACT

1 Amending Title 12 (Commerce and Trade) of the Pennsylvania  
2 Consolidated Statutes, providing for an angel investment tax  
3 credit.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Title 12 of the Pennsylvania Consolidated  
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 38

9 ANGEL INVESTMENT TAX CREDIT

10 Sec.

11 3801. Scope of chapter.

12 3802. Purpose.

13 3803. Definitions.

14 3804. Program established.

15 3805. Credit for qualified investment.

16 3806. Application of tax credit, carryover, carryback, refund  
17 and assignment.

18 3807. Time limitation.

1 3808. Limitation on tax credits.

2 3809. Shareholder, owner or member pass-through.

3 3810. Repayment and penalty.

4 3811. Reports.

5 3812. Termination.

6 3813. Guidelines.

7 § 3801. Scope of chapter.

8 This chapter relates to angel investment tax credits.

9 § 3802. Purpose.

10 The purposes of this chapter are to:

11 (1) Create a business environment in this Commonwealth  
12 that attracts and encourages early stage financing which  
13 creates business opportunities with the potential for high  
14 growth.

15 (2) Increase capital investment in this Commonwealth.

16 (3) Encourage job creation in this Commonwealth.

17 § 3803. Definitions.

18 The following words and phrases, when used in this chapter,  
19 shall have the meanings given to them in this section, unless  
20 the context clearly indicates otherwise:

21 "Accredited investor." A person who comes within any of the  
22 following categories at the time qualified to claim an angel  
23 investment tax credit:

24 (1) A natural person whose individual net worth, or  
25 joint net worth with that individual's spouse exceeds  
26 \$1,000,000.

27 (2) A natural person who had an individual income in  
28 excess of \$200,000 in each of the two most recent years or  
29 joint income with that individual's spouse in excess of  
30 \$300,000 in each of those years and has a reasonable

1 expectation of reaching the same income level in the current  
2 year.

3 (3) An entity in which all of the equity owners are  
4 persons who satisfy paragraph (1) or (2), or both. For  
5 purposes of this paragraph an equity owner shall mean the  
6 beneficial owner of equity securities or equity interest in  
7 the entity.

8 "Business plan." An outline of business structure and a  
9 formal statement of business goals, including an explanation of  
10 how the goals are anticipated to be achieved. At a minimum the  
11 business goals should indicate the potential for increasing jobs  
12 and capital investment in this Commonwealth. A plan shall  
13 specify that it is based upon the development or  
14 commercialization of intellectual property for which either of  
15 the following apply:

16 (1) Patent protection under 35 U.S.C. (relating to  
17 patents) has been secured or is pending.

18 (2) A copyright under 17 U.S.C. (relating to copyrights)  
19 has been secured or is pending.

20 "Department." The Department of Community and Economic  
21 Development of the Commonwealth.

22 "Net worth." The value of all long-term assets minus the  
23 value of all liabilities of a person, except as follows:

24 (1) the person's primary residence shall not be included  
25 as an asset; and

26 (2) indebtedness that is secured by the person's primary  
27 residence, up to the estimated fair market value of the  
28 primary residence at the time qualified to claim an angel  
29 investment tax credit, shall not be included as a liability,  
30 except that if the amount of such indebtedness outstanding at

1 the time qualified to claim an angel investment tax credit  
2 exceeds the amount outstanding 60 days before such time,  
3 other than as a result of the acquisition of the primary  
4 residence, the amount of such excess shall be included in a  
5 liability.

6 "Pass-through entity." A partnership as defined in section  
7 301(n.0) of the act of March 4, 1971 (P.L.6, No.2), known as the  
8 Tax Reform Code of 1971, or a Pennsylvania S corporation as  
9 defined in section 301(n.1) of the Tax Reform Code of 1971.

10 "Qualified business venture." A business that is based on a  
11 business plan that satisfies all of the following:

12 (1) The business is headquartered in this Commonwealth  
13 at the time the taxpayer applies for the angel investment tax  
14 credit.

15 (2) The business maintains its headquarters in this  
16 Commonwealth for at least five years after the taxpayer  
17 applied for the angel investment tax credit.

18 (3) At least 51% of the employees of the business are  
19 employed in this Commonwealth at the time the taxpayer  
20 applies for the angel investment tax credit and for at least  
21 three years thereafter.

22 (4) The business has fewer than 100 employees at the  
23 time the taxpayer applies for the angel investment tax  
24 credit.

25 (5) The business has been in operation in this  
26 Commonwealth for not more than five consecutive years at the  
27 time the taxpayer applies for the angel investment tax  
28 credit.

29 (6) The business has not received more than \$5,000,000,  
30 in the aggregate, in private equity investments at the time

1 the taxpayer applies for the angel investment tax credit.  
2 "Qualified investment." A private equity interest in a for-  
3 profit business acquired by the payment of money or its  
4 equivalent, which is subject to approval by the Department of  
5 Community and Economic Development for purposes of qualifying  
6 for this tax credit by an accredited investor or a network of  
7 accredited investors who review new businesses or proposed  
8 businesses for the purpose of making an initial or subsequent  
9 investment.

10 "Qualified tax liability." The liability for taxes imposed  
11 under Article III, IV or VI of the act of March 4, 1971 (P.L.6,  
12 No.2), known as the Tax Reform Code of 1971. The term shall  
13 include the liability for taxes imposed under Article III of the  
14 Tax Reform Code of 1971 on a member, owner or shareholder of a  
15 pass-through entity.

16 "Secretary." The Secretary of Community and Economic  
17 Development of the Commonwealth.

18 "Tax credit." The angel investment tax credit authorized  
19 under this chapter.

20 "Taxpayer." A person subject to tax under Article III, IV or  
21 VI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax  
22 Reform Code of 1971. The term shall include a member, owner or  
23 shareholder of a pass-through entity that receives an angel  
24 investment tax credit.

25 § 3804. Program established.

26 The Angel Investment Tax Credit Program is established in the  
27 department.

28 § 3805. Credit for qualified investment.

29 (a) Application.--A taxpayer that made a qualified  
30 investment in a taxable year may apply for a tax credit. The

1 department, in consultation with the Department of Revenue,  
2 shall establish appropriate application filing deadlines for tax  
3 credits in a manner that allows for the expeditious utilization  
4 of the tax credit by the taxpayer. The application shall be  
5 submitted on a form required by the department and must be  
6 accompanied by the business plan which has been certified by the  
7 taxpayer applying for the tax credit.

8 (b) Approval.--The department may approve the application  
9 upon being satisfied about the following:

10 (1) Upon review of the application for a tax credit, the  
11 department finds that all requirements have been met,  
12 including the requirements of a qualified business venture  
13 and any corresponding guidelines the department establishes  
14 in the best interest of the Commonwealth.

15 (2) The Department of Revenue finds that all taxpayers  
16 applying for the tax credit have:

17 (i) filed all required State tax reports and returns  
18 for all taxable years; and

19 (ii) entered into a payment plan under which  
20 payments have been maintained or paid any balance of  
21 State tax due as determined by the Department of Revenue.

22 (c) Amount.--A taxpayer that is approved under subsection  
23 (b) shall receive a tax credit for the taxable year in the  
24 amount of 25% of the taxpayer's qualified investment in a  
25 qualified business venture.

26 (d) Notification.--By December 31 of the calendar year  
27 following the close of the taxable year during which the  
28 qualified investment was made, the department shall notify the  
29 taxpayer of the amount of the taxpayer's tax credit approved by  
30 the department.

1 § 3806. Application of tax credit, carryover, carryback, refund  
2 and assignment.

3 (a) Application of tax credit.--A tax credit approved by the  
4 department for a qualified investment in a taxable year shall  
5 first be applied against the taxpayer's qualified tax liability  
6 for the current taxable year as of the date on which the tax  
7 credit was approved before the tax credit is applied against any  
8 tax liability under subsection (b).

9 (b) Carryover.--If the taxpayer cannot use the entire amount  
10 of the tax credit for the taxable year in which the tax credit  
11 is first approved, the excess may be carried over to succeeding  
12 taxable years and used as a credit against the qualified tax  
13 liability of the taxpayer for those taxable years. Each time  
14 that the tax credit is carried over to a succeeding taxable  
15 year, it shall be reduced by the amount that was used as a  
16 credit during the immediately preceding taxable year. The tax  
17 credit may be carried over and applied to succeeding taxable  
18 years for no more than seven taxable years following the first  
19 taxable year for which the taxpayer was entitled to claim the  
20 tax credit.

21 (c) Carryback or refund.--A taxpayer is not entitled to  
22 carry back or obtain a refund of an unused tax credit.

23 (d) Sale or assignment.--

24 (1) A taxpayer, upon application to and approval by the  
25 department in consultation with the Department of Revenue,  
26 may sell or assign, in whole or in part, a tax credit granted  
27 to the taxpayer under this chapter if the taxpayer does not  
28 have a qualified tax liability against which the tax credit  
29 may be applied in the current taxable year. The department  
30 shall establish guidelines, in consultation with the

1 Department of Revenue, for the approval of applications under  
2 this subsection.

3 (2) Before an application is approved, the Department of  
4 Revenue shall make a finding that the taxpayer and assignee,  
5 if any, have:

6 (i) filed all required State tax reports and returns  
7 for all taxable years; and

8 (ii) entered into a payment plan under which  
9 payments have been maintained or paid any balance of  
10 State tax due as determined at settlement, assessment or  
11 determination by the Department of Revenue.

12 (e) Purchasers and assignees.--The purchaser or assignee of  
13 all or a portion of a tax credit under subsection (d) shall  
14 immediately claim the credit in the taxable year in which the  
15 purchase or assignment is made, although the purchaser or  
16 assignee may carry over unused tax credits to the succeeding  
17 taxable year for up to two years. The amount of the tax credit  
18 that a purchaser or assignee may use against any one qualified  
19 tax liability may not exceed 75% of the qualified tax liability  
20 for the taxable year. The purchaser or assignee may not carry  
21 back or obtain a refund of or sell or assign the tax credit. The  
22 purchaser or assignee shall notify the department, and the  
23 department shall notify the Department of Revenue of the seller  
24 or assignor of the tax credit in compliance with procedures  
25 specified by the department, in consultation with the Department  
26 of Revenue.

27 (f) Taxpayer's adjusted basis in a qualified investment.--

28 (1) A taxpayer's adjusted basis in a qualified  
29 investment must be reduced by an amount equal to the tax  
30 credit approved under section 3805(c) (relating to credit for



1 qualified investment).

2 (2) Except for the reduction in adjusted basis required  
3 in paragraph (1), a taxpayer's adjusted basis in a qualified  
4 investment is determined under the act of March 4, 1971  
5 (P.L.6, No.2), known as the Tax Reform Code of 1971, and the  
6 regulations promulgated thereunder.

7 § 3807. Time limitation.

8 A taxpayer shall not be entitled to a tax credit for  
9 qualified investments made in taxable years ending after  
10 December 31, 2021.

11 § 3808. Limitation on tax credits.

12 (a) Total amount.--The total amount of tax credits approved  
13 by the department in a fiscal year shall be equal to the  
14 difference between \$25,000,000 and the total amount of keystone  
15 innovation zone tax credits issued under section 3706 (relating  
16 to keystone innovation zone tax credits) through December 15th  
17 of each year.

18 (b) Allocation.--Tax credits shall be allocated by the  
19 department on a first-come-first-served basis.

20 § 3809. Shareholder, owner or member pass-through.

21 (a) Shareholder entitlement.--If a Pennsylvania S  
22 corporation does not have a qualified tax liability against  
23 which the tax credit may be applied, a shareholder of the  
24 Pennsylvania S corporation shall be entitled to a tax credit  
25 equal to the tax credit determined for the Pennsylvania S  
26 corporation for the taxable year multiplied by the percentage of  
27 the Pennsylvania S corporation's distributive income to which  
28 the shareholder is entitled.

29 (b) Pass-through entity entitlement.--If a pass-through  
30 entity other than a Pennsylvania S corporation does not have a

1 qualified tax liability against which the tax credit may be  
2 applied, an owner or member of the pass-through entity shall be  
3 entitled to a tax credit equal to the tax credit determined for  
4 the pass-through entity for the taxable year multiplied by the  
5 percentage of the pass-through entities' distributive income to  
6 which the owner or member is entitled.

7 (c) Additional credit.--

8 (1) Except as provided under paragraph (2), the tax  
9 credit provided under subsection (a) or (b) shall be in  
10 addition to any tax credit to which a shareholder, owner or  
11 member of a pass-through entity is otherwise entitled under  
12 this chapter.

13 (2) A pass-through entity and a shareholder, owner or  
14 member of a pass-through entity shall not claim a tax credit  
15 under this chapter for the same qualified investment.

16 § 3810. Repayment and penalty.

17 (a) Imposition.--Except as provided in subsection (b), the  
18 department shall require the taxpayer to repay any tax credit  
19 received and any monetary value received from the sale or  
20 assignment, if any, of a tax credit and shall impose a penalty  
21 of 10% based on the total amount of the tax credit received,  
22 where the department, in conjunction with the Department of  
23 Revenue, determines that any of the following conditions exists:

24 (1) The qualified business venture did not satisfy the  
25 requirements of the certified qualified business plan.

26 (2) The business in which the taxpayer made the  
27 qualified investment is no longer a qualified business  
28 venture.

29 (3) The taxpayer received the tax credit as a result of  
30 fraud or false pretenses.

1 (b) Exception.--The department may waive the repayment of a  
2 tax credit and any monetary value received from the sale or  
3 assignment, if any, of the tax credit and may waive the penalty  
4 required by subsection (a) if the department determines that the  
5 failure to meet the requirements of the certified qualified  
6 business plan was due to circumstances outside the recipient  
7 taxpayer's control.

8 § 3811. Reports.

9 The secretary shall submit an annual report to the chair and  
10 minority chair of the standing committees in the Senate and the  
11 chair and minority chair of the standing committees in the House  
12 of Representatives with jurisdiction over the department and the  
13 Department of Revenue indicating the effectiveness of the tax  
14 credit provided under this chapter no later than March 15  
15 following the fiscal year in which the tax credits were  
16 approved. Notwithstanding any law providing for the  
17 confidentiality of tax records, the report shall include the  
18 names of all taxpayers awarded the tax credit, utilizing the tax  
19 credit as of the date of the report, the amount of the tax  
20 credits approved and utilized by each taxpayer and the names and  
21 locations of the qualified business ventures for which the tax  
22 credits were awarded. The report may also include any  
23 recommendations for changes in the calculation or administration  
24 of the tax credit. The report and the information contained in  
25 it shall be considered a public record under section 102 of the  
26 act of February 14, 2008 (P.L.6, No.3), known as the Right-to-  
27 Know Law.

28 § 3812. Termination.

29 The department shall not approve a tax credit for qualified  
30 investments made in taxable years ending after December 31,

1 2021.

2 § 3813. Guidelines.

3 The department, in conjunction with the Department of  
4 Revenue, shall develop written guidelines for the implementation  
5 and administration of this chapter. The guidelines shall be  
6 posted on the department's publicly accessible Internet website.

7 Section 2. This act shall take effect immediately.